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No. 85-270

In the Supreme Court of the United States

OCTOBER TERM, 1985

RICHARD ALLEN GANT AND DEBORAH CORRINE SCHNEIDER, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

CHARLES FRIED
Acting Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

BEST AVAILABLE COPY

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Petitioners contend that the court of appeals erred in reversing an order suppressing evidence seized under a search warrant.

On September 26, 1983, petitioners were charged in an indictment returned in the United States District Court for the Southern District of Texas with possession of cocaine, in violation of 21 U.S.C. 841(a)(1), and conspiracy to violate the narcotics laws, in violation of 21 U.S.C. 846. On May 9, 1984, the district court suppressed evidence seized from petitioner Gant's home by law enforcement officers pursuant to a search warrant on the ground that the affidavit for the warrant failed to establish probable cause (Pet. App. 11a-28a). The court of appeals, relying on *United States* v. *Leon*, No. 82-1771 (July 5, 1984), reversed, concluding that the officers acted in objective good faith in

relying on the magistrate's determination of probable cause in the issuance of the warrant (Pet. App. 1a-10a; 759 F.2d 484).

Petitioners contend (Pet. 5-9) that the conclusion of the court of appeals that the evidence should not have been suppressed is not consistent with *Leon*. They also suggest (Pet. 9-12) that this Court should establish the standard for appellate review of the trial court's determination of the good faith of officers executing an invalid warrant. Finally, they argue (Pet. 12-16) that an officer executing a defective warrant may not manifest good faith reliance on a warrant that he has never read. Whatever the merits of petitioners' contentions, they are not presently ripe for review by this Court.[1] The court of appeals' decision places petitioners in precisely the same position they would have occupied if the district court had denied their motion to suppress. If petitioners are acquitted following a trial on the merits, their contentions will be moot. If, on the other hand, petitioners are convicted and their convictions are affirmed on appeal, they will then be able to present their contentions to this Court, together with any other claims they may have, in a petition for a writ of certiorari seeking review of a final judgment against them. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.[2]

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[1]It is now over 23 months since the return of the indictment and over 15 months since the district court's suppression order. Further interlocutory review at this time would cause additional delay in trial of the charges against petitioners.

[2]Because this case is interlocutory, we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court requests.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Acting Solicitor General

SEPTEMBER 1985